IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, *Plaintiff*, v. FACEBOOK, INC., *Defendant*.	Civil Action No.: 2018 CA 008715 B Judge Fern F. Saddler Next Event: None Scheduled Date: N/A

DISTRICT OF COLUMBIA'S PRAECIPE RESPONDING TO FACEBOOK, INC.'S NOTICE OF SUPPLEMENTAL AUTHORITY

The District of Columbia ("District") submits this praecipe to address several mischaracterizations made by Facebook, Inc. ("Facebook") in its notice of supplemental authority (the "Notice") that discussed a recently decided federal case, *Corley v. Vance, et al.*, No. 15 Civ. 1800 (KPF) (S.D.N.Y. Mar. 27, 2019). *See* Notice Ex. A ("slip op.").

First, Facebook presents *Corley* as allegedly relevant because it holds that Facebook's New York business registration and offices are "insufficient to establish general jurisdiction." Notice at 1 (quoting slip op. at 18). The District's argument is premised on specific personal jurisdiction, so this holding relating to general personal jurisdiction is irrelevant. Facebook knows this, as it is has recognized that general personal jurisdiction is "not contest[ed]" here. Reply at 1. Moreover, Facebook largely skips over *Corley*'s findings on specific personal jurisdiction. On that issue, the court held that Facebook's "regist[ration] to do business in New York" and "offices in New York City" showed that it "has plainly availed itself of New York law" under New York's long-arm statute authorizing jurisdiction over companies transacting business in the state. Slip op. at 20 (emphasis added). These exact same elements, of course, are present in this case. *See* District's Opp'n to Mot. to Dismiss ("District's Opp'n") at 6 (D.C. business registrations), 11 (D.C. office), 12 (District long-arm statute authorizing jurisdiction over entities "transacting any

business" in D.C.). The Court should look through Facebook's omission and reject its solicitation to conflate general and specific jurisdiction.

Second, Facebook's misrepresentations continue when it argues that the claims in *Corley* are "like the District's claims" and thus, both cases arise out of Facebook's California activities. Notice at 1. This characterization cannot be taken seriously. Here, the District's claims arise out of Facebook's business in D.C. providing social networking services, through which it made misrepresentations to hundreds of thousands of its D.C. customers. The claim in *Corley* was quite different. There, a pro se plaintiff, who had been previously convicted on child pornography charges, alleged that Facebook – in a conspiracy with over twenty codefendants including Google, Inc., the Manhattan District Attorney, and the City of New York – violated privacy laws by disclosing his "records, emails, and instant messages" to law enforcement during the investigation that led to his conviction. *Id.* at 4-5. Facebook's disclosure (i.e., production) of an individual's data in response to law enforcement in *Corley* has nothing to do with Facebook's disclosures (i.e., representations) made to D.C. consumers about the security of their data in this case. To that point, the court's holding that *Corley*'s claim arose out of California activities relied on the fact that Facebook's "record custodians" responsible for responding to law enforcement requests "are located" in California. *Id.* at 20. Here, of course, Facebook's employees involved in the alleged illegal conduct were located in D.C. Indeed, the Court should generally disregard Facebook's repeated invocations of its success dismissing pro se pleadings (like in *Corley*), all of which are distinct from the District's action in that none alleged claims arising out of Facebook's representations to forum consumers nor provided evidence of misconduct committed by Facebook employees based in the forum. *See* District's Opp'n at 11 n.10, 13.

Finally, these mischaracterizations continue a pattern in this case. Again and again, Facebook has advanced makeshift rules and arguments that are either wrong or misleading. For instance:

- Facebook has erroneously told this Court that it "cannot" rely on documents submitted by the District to evaluate personal jurisdiction – directly contradicting D.C. Circuit precedent and hornbook law. *See* District's Surreply, filed March 21, 2019, at 1.

- Facebook has represented that the Ninth Circuit allegedly resolved the "exact same contracts" at issue here – but failed to mention that the relevant resolved contractual provisions were entirely different from the ones the District alleges are misleading in this case. *Id.* at 2.

- Most recently, at oral argument on its Motion to Dismiss, Facebook informed the Court that the federal judge presiding over the multidistrict litigation "expressed numerous times in argument that there is no problem with the – with a state law enforcement action taking place in an MDL," Hr'g 50:21-23 – a claim that is directly contradicted by that same judge's ruling remanding another state enforcement action back to Illinois state court. *See In re Facebook Consumer Privacy User Profile Litig.*, 354 F. Supp. 3d 1122, 1125 (N.D. Cal. 2019) ("When a case is folded into multidistrict litigation, it will almost inevitably be delayed. . . . And this is a serious concern if the plaintiff is a government entity or official – the multidistrict litigation process would intrude on state or local sovereignty.")

This pattern should not escape the Court as it weighs the competing arguments in this case.

Dated: April 3, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Randolph T. Chen, certify that on April 3, 2019, a copy of the foregoing Praecipe Responding to Facebook, Inc.'s Notice of Supplemental Authority was served on all counsel of record via CaseFileXpress:

/s/ Randolph T. Chen
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